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Faculty Collective Bargaining in Australia

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The legal framework for higher education bargaining in Australia

Anthony Forsyth
National Centre for Study of CB in Higher
Education & the Professions – 45th
Annual Conference, NYC
17.04.2018

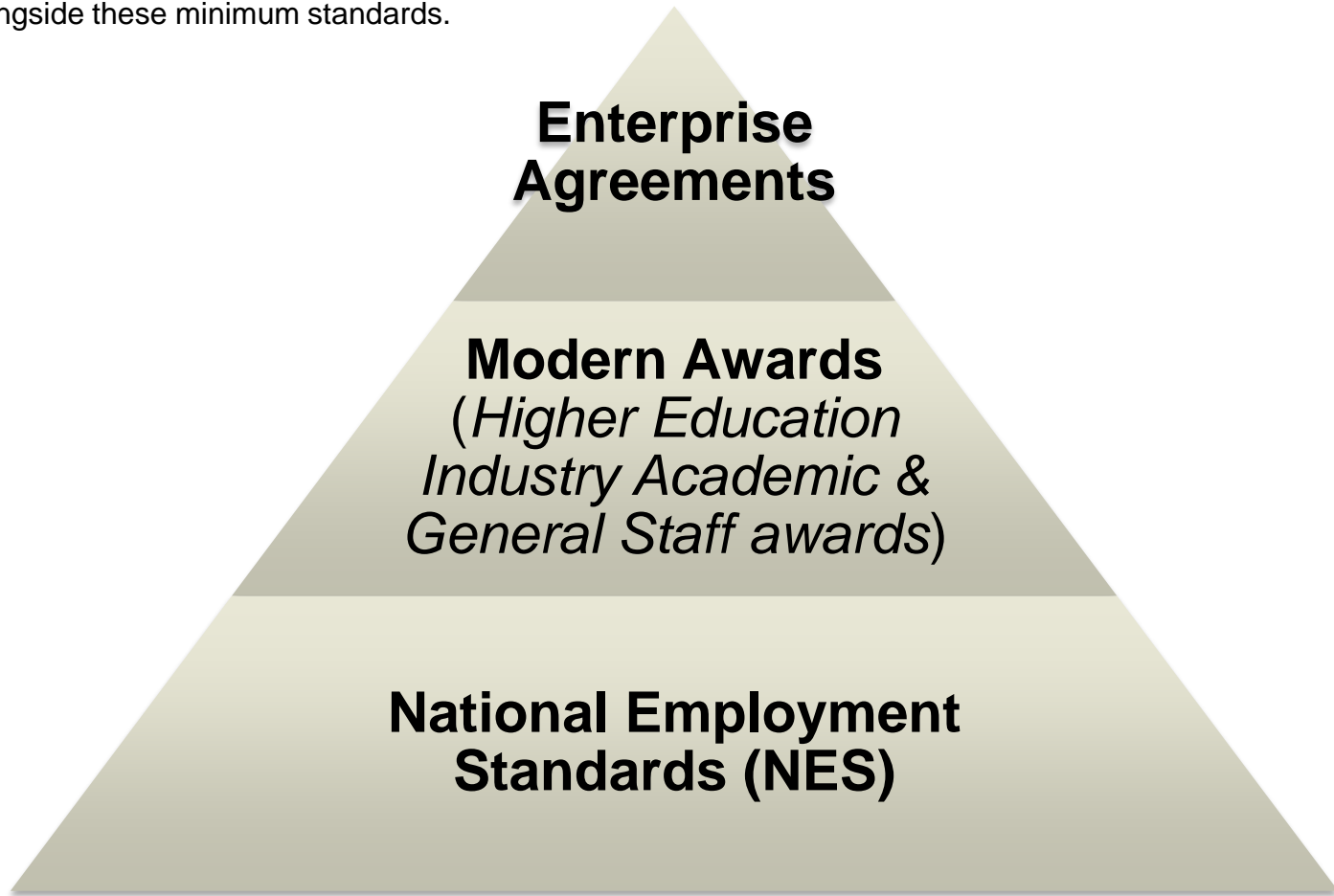
Australian labour law & industrial relations: a brief history



- 1904-early 1990s: Conciliation & arbitration era
Industry-level regulation ('awards')
- 1993: Introduction of 'enterprise bargaining'
- 1996-2007: Attack on union rights
Individual bargaining
- 2007-present: *Fair Work Act 2009*
Protective regulation
Collective bargaining

Fair Work Act 2009 – framework of minimum standards

- Note: for all employees, the **employment contract** sits alongside these minimum standards.

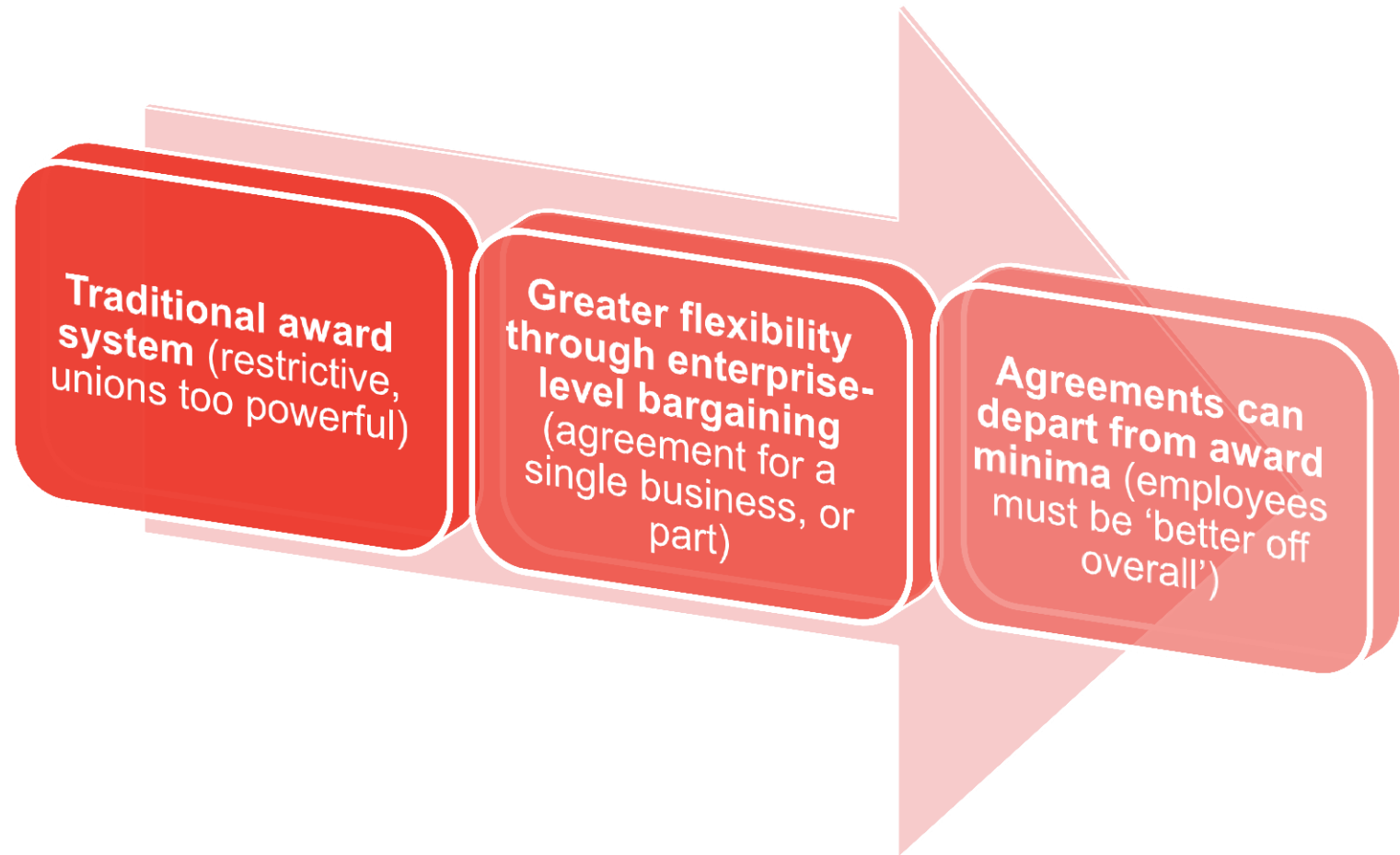


Key institutions in the Fair Work system



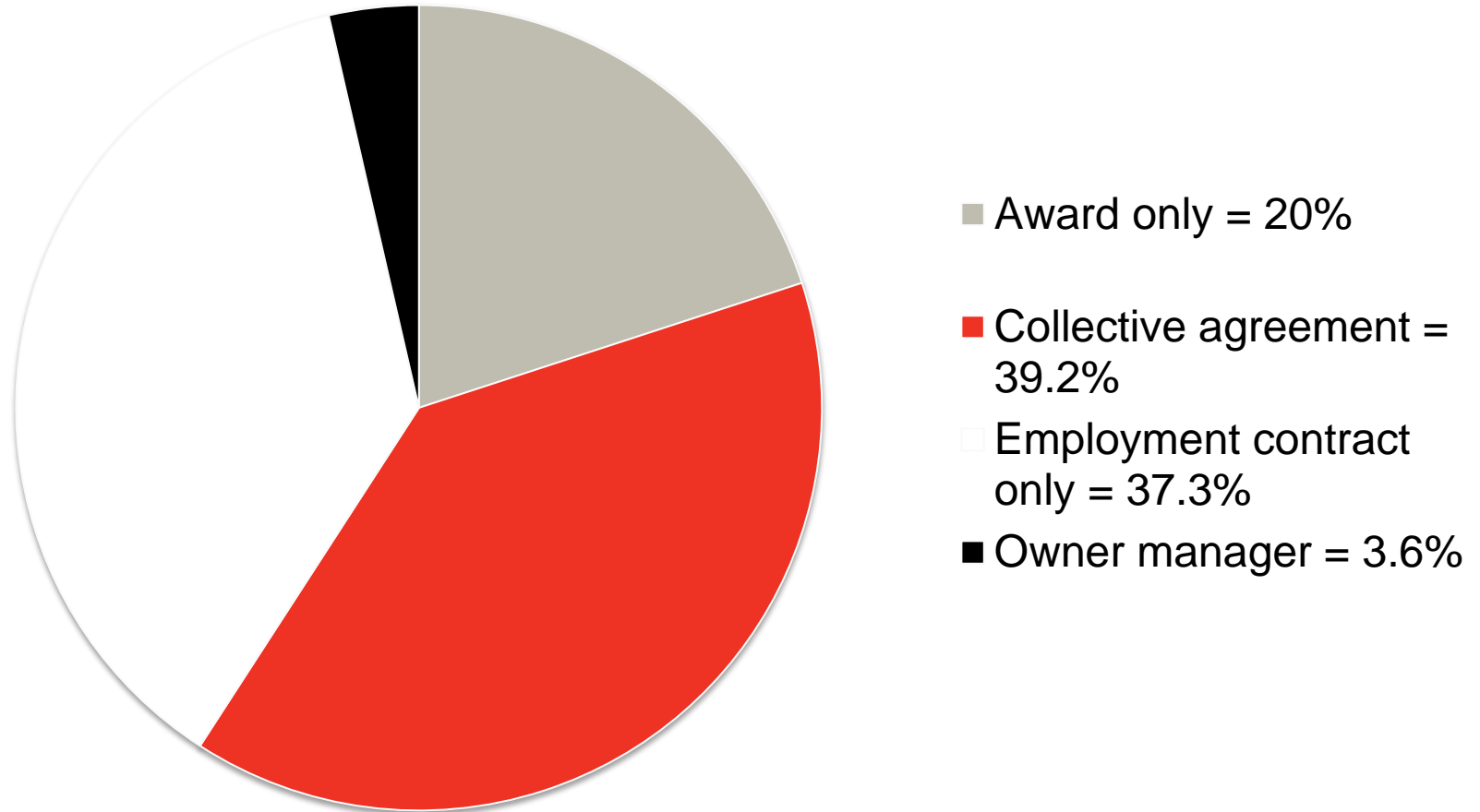
- Sets the national minimum wage annually (A\$18.29 per hour = \$US14.17)
- Resolves workplace disputes & unfair dismissal cases
- Oversees modern awards
- Approves agreements
- Powers re enterprise bargaining
- Advice & information (employment rights & obligations)
- Enforcement of NES, awards & agreements
- Investigation and enforcement proceedings (recovery of underpayments & civil penalties)

Why did Australia shift to Enterprise Bargaining from the early 1990s?



Award & agreement coverage

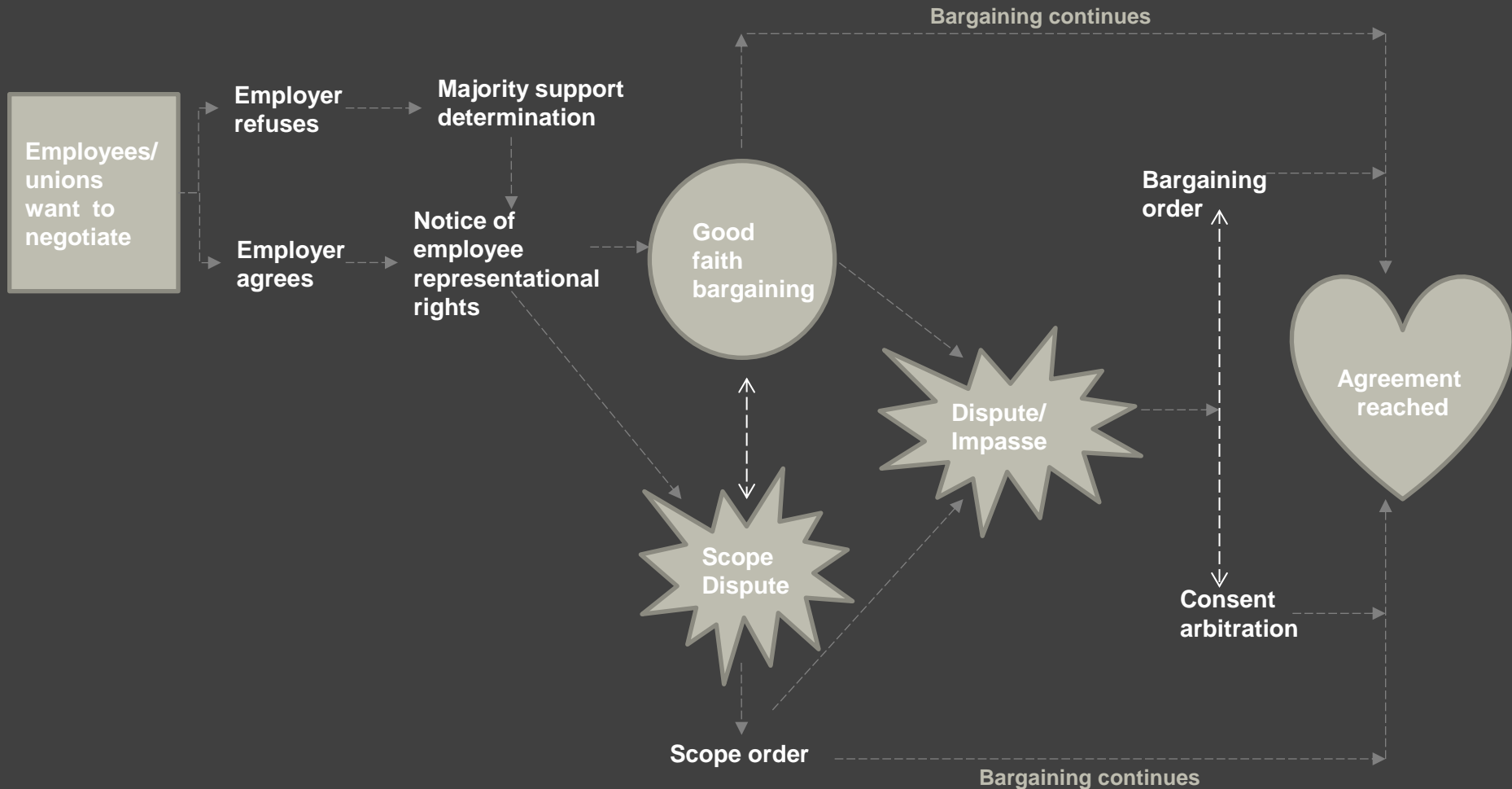
Workforce coverage by instrument



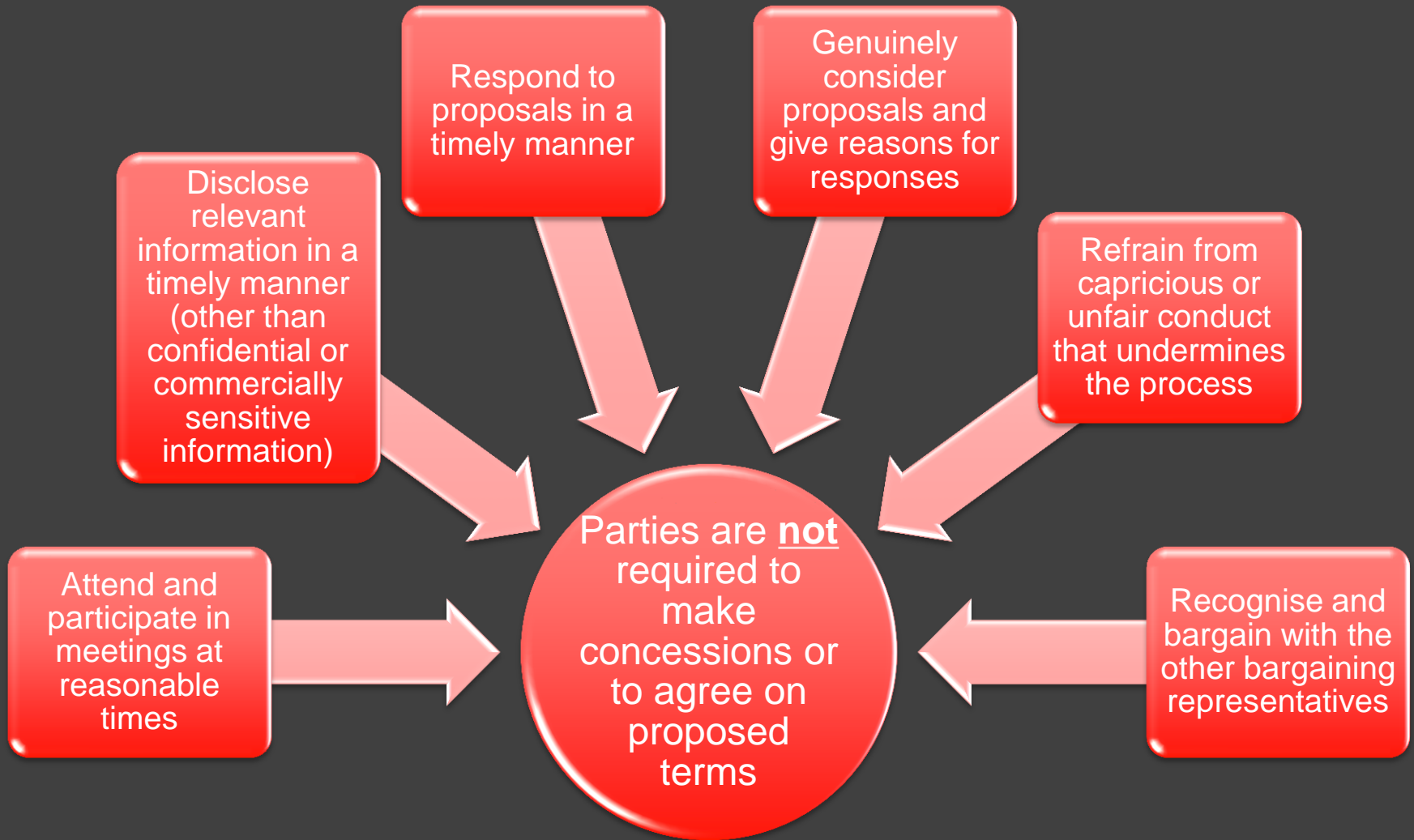
Enterprise bargaining under *Fair Work Act* – Key concepts

- **Bargaining representatives**
- **Majority support determination (MSD)** [= *US union recognition*]
- **Scope order** [= *bargaining unit*]
- **Good faith bargaining (enforced by bargaining order)**
- **Dispute resolution by Fair Work Commission** [*approx. = NLRB*]
- **Protected industrial action:** *NTEU v Monash University [2013] FWCFB 5982*; see also *NTEU v Univ of South Australia [2010] FWAFB 1014*

The bargaining process under *Fair Work Act*



Good faith bargaining obligations



Another option for intractable bargaining - termination of the existing agreement

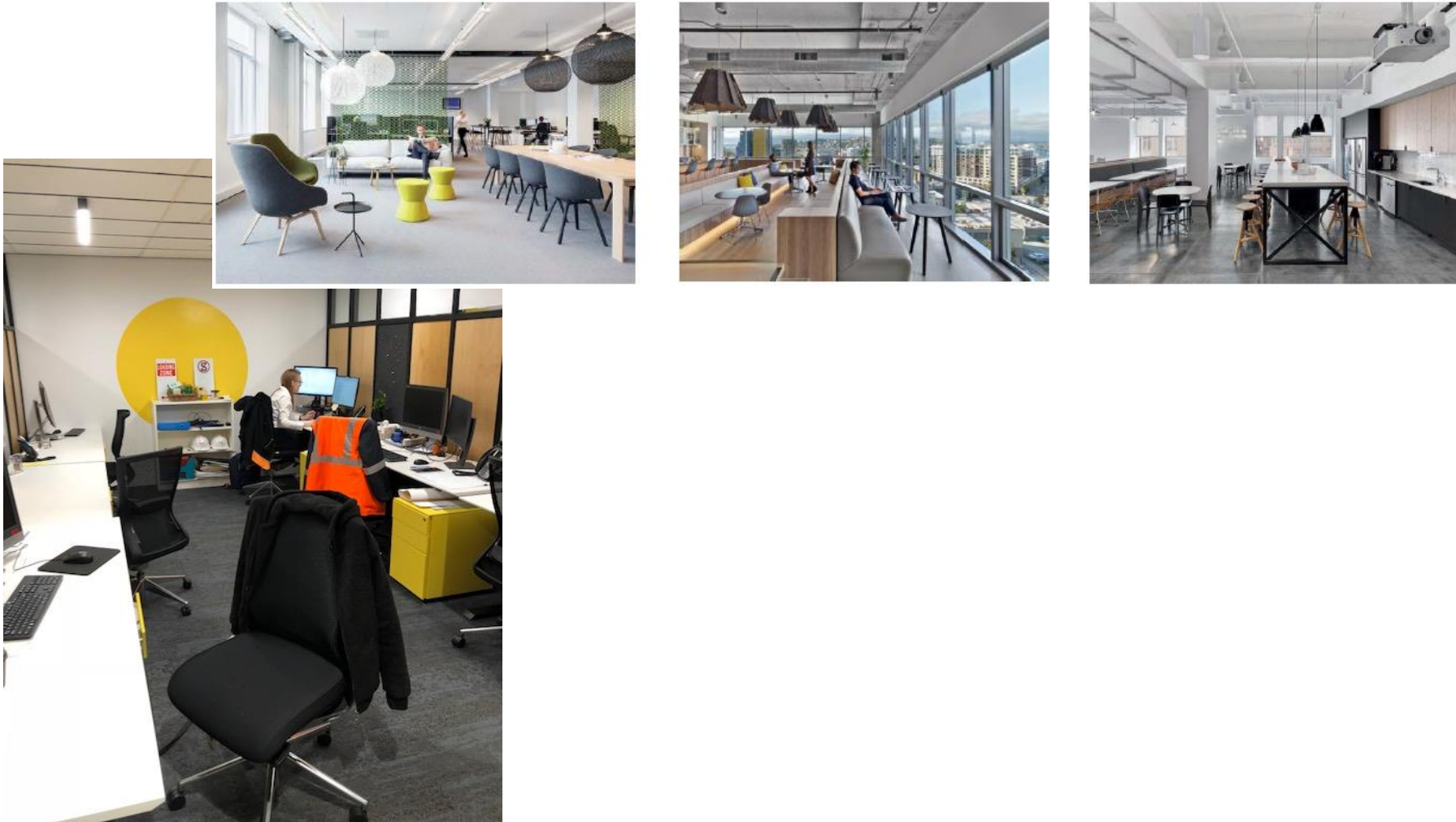
- Party can apply to FWC to terminate existing agreement after its nominal expiry date, under *Fair Work Act* sections 225-226
- Termination if not contrary to 'public interest' – after hearing from employees, union, employer
- Greater FWC preparedness to terminate since *Re Aurizon Operations* (2015) 249 IR 55
- Employees' \$\$ & conditions drop to applicable modern award
- Significant addition to employer leverage in bargaining
- *Murdoch University [2017] FWCA 4462* (agreement terminated)

RMIT Bargaining 2017-18: process & key issues

- This bargaining round less adversarial than 2013-14
- No protected industrial action
- V-C focus on improving online delivery
- Career pathways for casual academic staff
- Professional staff working hours → flexible work arrangements



RMIT Bargaining – accommodation dispute threatens conclusion of new agreement



Union movement campaign for major legislative changes (#changetherules)



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